

GUSRAE KAPLAN NUSBAUM PLLC
ATTORNEYS AT LAW

120 WALL STREET-25TH FLOOR
NEW YORK, NEW YORK 10005

OF COUNSEL
ROBERT L. BLESSEY

SCOTT H. GOLDSTEIN
MARTIN H. KAPLAN
LAWRENCE G. NUSBAUM
RYAN J. WHALEN

TEL (212)269-1400
FAX (212)809-4147

81 MAIN STREET-SUITE 215
WHITE PLAINS, NEW YORK 10601
(914)644-8323

www.gusraekaplan.com

August 27, 2019

VIA ECF

The Honorable Gregory H. Woods, United States District Court Judge
United States District Court
Southern District of New York
Daniel Patrick Moynihan United States Courthouse
500 Pearl Street
New York, NY 10007

Re: American E Group LLC v. Livewire Ergogenics, Inc. No. 1-18-cv-03969 (GHW)

Dear Judge Woods:

We represent Defendant/Counter-Plaintiff/Third-Party Plaintiff Livewire Ergogenics, Inc. ("Livewire") in the above-captioned action. We are writing pursuant to the Court's Individual Rules of Practice, Rule 2.C to request a pre-motion conference in connection with Defendants' anticipated motion to strike Plaintiff, American E Group, LLC's ("AEG" or "Plaintiff") Second Amended Complaint (the "SAC") filed with the Court on August 22, 2019. D.E. 168.

The basis of the motion to strike is two-part: first, the SAC differs materially from the proposed Second Amended Complaint (the "PSAC") that was filed as Exhibit A to the Declaration of Christopher Milazzo in support of Plaintiff's Motion for Leave to File Second Amended Complaint. D.E. 62. For example, while the PSAC contains a total of 71 paragraphs, the SAC contains a total of 80 paragraphs. The majority of the additions in the SAC are found at paragraphs 1 and 17 through 30, which contain allegations of fact that were not included in the PSAC.

The second basis to strike the SAC is that Claims II and III remain despite these claims being denied as futile by the Court in its Order filed on August 5, 2019. D.E. 152.

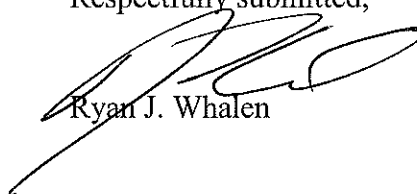
GUSRAE KAPLAN NUSBAUM PLLC

The Honorable Gregory H. Woods, United States District Court Judge
United States District Court
August 27, 2019

It is respectfully submitted that the Court schedule a pre-motion conference to address Livewire's anticipated motion to strike the SAC to the extent it includes allegations of fact not previously included in the PSAC and fails to remove Claims II and III that were deemed futile by the Court.

On August 26, 2019, Livewire requested that AEG withdraw and refile the SAC on the grounds that it asserted new claims not previously asserted in the PSAC. AEG's counsel acknowledged that the SAC contains allegations of fact not included in the PSAC, but refused Livewire's request.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Ryan J. Whalen", is written over the typed name. The signature is stylized with a large, sweeping initial "R" and "W".

Ryan J. Whalen